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RICHARD A. DOBESKI,
Appellant-Defendant,

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Appellee-Plaintiff.

March 16, 2009

BAILEY, Judge

Case Summary

Appellant-Defendant Richard Dobeski (“Dobeski”) appeals his conviction for Possession of Child Pornography, a Class D felony,¹ presenting the sole issue of whether his conviction is supported by sufficient evidence. We affirm.

Facts and Procedural History

On August 31, 2007, the Pulaski County Sheriff’s Department executed a search warrant at Dobeski’s mobile home in Westville, Indiana, and recovered a computer floppy disk that contained twenty-one images of nude males appearing to be under the age of sixteen.

On September 7, 2007, the State charged Dobeski with Possession of Child Pornography.² On April 15, 2008, a jury found Dobeski guilty. He was sentenced to three years imprisonment and now appeals.

Discussion and Decision

When reviewing the sufficiency of the evidence to support a conviction, we will consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). In so doing, we will not assess witness credibility and we will not weigh the evidence. Id. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

Dobeski was charged with violating Indiana Code Section 35-42-4-4(c), which

¹ Ind. Code § 35-42-4-4.

² Dobeski was also charged with Child Molesting, but that charge was severed and tried separately.

provides:

A person who knowingly or intentionally possesses:

1. a picture;
2. a drawing;
3. a photograph;
4. a negative image;
5. undeveloped film;
6. a motion picture;
7. a videotape
8. a digitized image; or
9. any pictorial representation;

that depicts or describes sexual conduct by a child who the person knows is less than sixteen (16) years of age or who appears to be less than sixteen (16) years of age, and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Class D felony.

Dobeski contends that the State failed to prove that he possessed the floppy disk at issue because the State did not prove that he was in exclusive control of the mobile home premises. More specifically, he claims “the presence of a vehicle belonging to another person at the scene of the search strongly suggests that possession of the premises was not exclusively with the defendant.” Appellant’s Brief at 6. The person to whom Dobeski refers is his then eighty-four-year-old mother, Lucille Dobeski, a resident of the Life Care Center of Michigan City, Indiana.

Actual possession of contraband occurs when a person has direct physical control over the item. Gee v. State, 810 N.E.2d 338, 340 (Ind. 2004). Dobeski was not present at the seizure of the floppy disk and thus the State necessarily prosecuted its case against Dobeski under the theory of constructive possession. Constructive possession occurs when the State shows that the defendant has both (1) the intent to maintain dominion and control over the

contraband and (2) the capability to maintain dominion and control over it. Id. The proof of a possessory interest in the premises on which contraband is found is adequate to show the capability to maintain dominion and control over the items in question. Id. In order to prove that a defendant had the intent to maintain dominion and control over the contraband, the State must prove that the defendant had knowledge of its presence. Id. at 341. This knowledge may be inferred from either the exclusive possession of the premises or, if the possession is not exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband. Richardson v. State, 856 N.E.2d 1222, 1228 (Ind. Ct. App. 2006), trans. denied.

Here, the State relied upon Dobeski's exclusive control of the premises. Sheriff Michael Lewis Gayer testified that he and his deputies executed a search warrant at Dobeski's mobile home residence and seized a floppy disk containing images of young nude males. Ronald Sibley, the maintenance man for the Westville Estates mobile home park, testified that he lived approximately seventy feet from the mobile home where Dobeski had resided since April or May of 2007. Sibley testified that Dobeski was the only resident in that mobile home and reiterated: "There was no one else that I have known of with him at any time at his trailer. I have never seen him with anybody else in that trailer." (Tr. 70.) The vehicle parked at Dobeski's residence at the time of the search was registered to Lucille Dobeski. However, the State introduced evidence that Lucille Dobeski resided at the Life

Care Center of Michigan City, commencing on May 3, 2007, and continuing until at least November 7, 2007.³

There is sufficient evidence from which the jury could conclude that Dobeski had exclusive control of the premises where contraband was found, and had both the capability and intent to maintain dominion and control over the items. The State presented sufficient evidence to establish that Dobeski possessed child pornography.

Affirmed.

MATHIAS, J., and BARNES, J., concur.

³ The facility records show that Lucille Dobeski received an influenza shot at the facility on November 7, 2007. At some unknown date thereafter, she was evidently discharged because she had a re-admittance date of June 6, 2008.